



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
EDISON, NEW JERSEY 08837

FEB - 4 2015

**ACTION MEMORANDUM – RV1**

**SUBJECT:** Confirmation of a Verbal Authorization for the CERCLA Emergency Removal Action at the Phoenix Development and Construction Site in Darien, Genesee County, New York

**FROM:** Keith Glenn, On-Scene Coordinator  
Removal Action Branch

A handwritten signature in black ink, appearing to read "Keith Glenn", with the word "for" written below it.

**THRU:** Joseph D. Rotola, Chief  
Removal Action Branch

A handwritten signature in black ink, appearing to read "Joseph D. Rotola", written over the text of the "THRU" line.

**TO:** Walter E. Mugdan, Director  
Emergency and Remedial Response Division

**Site ID No.: A24M**

**I. PURPOSE**

The purpose of this Action Memorandum is to confirm and document the verbal authorization granted by the Director of the Emergency and Remedial Response Division ("ERRD") to initiate an emergency removal action at the Phoenix Development and Construction Site ("Site") located in Darien, Genesee County, New York. On November 17, 2014, the On-Scene Coordinator ("OSC") requested and was granted verbal authorization pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") to initiate a removal action. The total funding authorized for this action is \$250,000, of which \$200,000 is for mitigation contracting. The removal action was initiated on November 17, 2014.

The Site is not on the National Priorities List ("NPL") nor is it proposed for inclusion on the NPL. There are no nationally significant or precedent setting issues associated with this removal action.

308612



## **II. SITE CONDITIONS AND BACKGROUND**

The Comprehensive Environmental Response, Compensation and Liability Information System ("CERCLIS") Identification Number for the Site is NYN000201291.

### **A. Site Description**

#### **1. Removal site evaluation ("RSE")**

The New York State Department of Environmental Conservation ("NYSDEC") requested the U.S. Environmental Protection Agency ("EPA") to review the Phoenix Development and Construction Site as a candidate for federal government intervention. On October 31, 2014, the NYSDEC submitted a letter to the EPA formally requesting an emergency removal action under CERCLA to address threats to public health and the environment associated with the presence of drums and containers holding waste oil, sludge and unknown solvents. The NYSDEC referral is included as Attachment A.

In June 2014 an off-duty NYSDEC Police Officer observed opening burning at the Site and notified the NYSDEC remediation office. Upon entry, numerous 55-gallon drums were found in deteriorating conditions located outside exposed to the weather. Several were found on their side with contents spilling into a marsh area. NYSDEC hired contractors to stabilize containers by over-packing, up-righting drums and vacuuming liquids that were impacting the marsh. Containers were inventoried and grouped by suspected content including flammable paint, spent sandblasting agents, unknown solvents, waste oils, blended fuel waste, unknown solids and unknown sludge. In October 2014, approximately 17 composite samples were collected from the drums and sent to a laboratory for analysis. Data showed concentrations of lead at 109 mg/kg and chromium at 19.9 mg/kg, levels exceeding Resource Conservation and Recovery Act ("RCRA") criteria for classification of characteristic hazardous waste. Concentrations of BTEX compounds exceed 1,200 ppm. Acetone, naphthalene, and other VOCs/SVOCs were also found at elevated concentrations. Flashpoints were found to be as low as 73°F.

On November 13, 2014 the Removal Action Branch ("RAB") initiated a removal assessment at the Site and surrounding properties. The NYSDEC showed EPA the stabilization activities conducted by State contractors. Approximately 100 drums were observed outside exposed to the elements. Although containers were found to be consolidated and segregated by material, tarps used to cover the drums were compromised by high winds, exposing container contents. Numerous drums were observed lying on their side, void of tops, having holes or dents and spilling contents on the soil. Stained soils and sheening was noted throughout the property, including in the marsh areas. A tour of buildings located on the property found additional drums, tanks and pails holding waste oil, solvents, flammable paint, and large quantities of zinc dust. Zinc dust can become unstable and explosive when in contact with air and moisture. In addition, spills of spent sandblasting agents were observed near floor drains that lead to outside areas of the property.

## **2. Physical location**

The Phoenix Development and Construction Site is located at 180 Genesee Road, Town of Darien, Genesee County, New York (14036) (coordinates 42.94812, -78.46128); Tax Record 58.221. The Site consists of an 8,000 ft<sup>2</sup> pole-barn warehouse, office building, two decontamination trailers and derelict vehicles located throughout a five acre parcel. The Site is bordered by Genesee Road to the north, vacant land once used for wood chipping to the east, Conrail railroad tracks to the south and a residential property to the west. Additional residential properties are located directly across Genesee Road and adjacent to the neighboring vacant parcel.

The property has several manmade impoundments, some in excess of ten feet high. Marsh areas are located in the south and west areas of the property. A federally designated wetland is located across Genesee Road approximately 500 feet to the north.

## **3. Site characteristics**

Phoenix Development and Construction was in the steel painting business, obtaining contracts with local governments for infrastructure projects. Operations primarily included sandblasting and painting steel bridges. Operations at the Site ended approximately in September 2013.

The property is currently unsecured and in a state of disorganization. Gates at the entrance are not locked and access is available to the office and warehouse facilities. Equipment and material has been thrown about the property indicating the presence of vandals and potential looting activities. No operations are currently ongoing and no personnel occupy the Site.

This facility has not been owned/operated by any federal, State or local government entity. This is the first removal action undertaken by EPA at the Site.

## **4. Release or threatened release into the environment of a hazardous substance, or pollutant, or contaminant**

Actual and threatened releases of hazardous substances from containers at the Site have been documented. Approximately 17 composite samples were collected by the NYSDEC and analyzed for disposal parameters. Analytical data indicate the presence of lead, chromium, arsenic, and zinc as well as other heavy metals. Elevated concentrations of acetone, benzene, toluene, naphthalene, and other VOC/SVOC compounds were also present in some samples. Flashpoints were found to be as low as 73°F. Labels on several containers included the following markings: zinc dust, flammable paint and primer, lubricating oils, and fireproofing materials. Containers were found to be compromised with contents spilled onto the ground, near floor drains inside the building and near storm drains outside of the building. Several containers were also found to be bulging, rusted out, and/or without sealed tops. Heavy rain and significant snow fall have also caused overtopping of several drums that are void of covers, resulting in spills onto the soil.

The hazardous substances listed below were observed to be present at the Site during the RSE in November 2014.

Compound	Statutory Source for Designating a Hazardous Substance			
	311(b)(2) CWA	307(a)CWA	112 CAA	3001 RCRA
Arsenic		X	X	
Benzene	X	X	X	X
Chromium		X	X	
Flammable Liquid				X
Lead		X	X	
Toluene	X	X	X	X
Zinc		X		

The following materials were analyzed at an off-site laboratory contracted by NYSDEC and are characteristic hazardous wastes under RCRA §3001 and CERCLA hazardous substances:

- Approximately 35 drums of flammable solids/liquids; and
- Approximately 36 drums containing heavy metals.

In addition to analytical data, container labels indicate the presence of CERCLA hazardous substances. Approximately 40 containers holding zinc dust, which is unstable in air and moisture, have been identified at the Site.

The mechanisms for releases to the environment are from poor handling practices and improper storage of materials due to abandonment. Along with poor housekeeping, most containers are located in an unsecure location and exposed to adverse weather conditions. Human contact and tampering with the containers is evident as materials and equipment have been moved throughout the property. Common routes of exposure to these materials include dermal contact, ingestion, and inhalation.

## **5. NPL Status**

The Site is not on the NPL, nor is proposed for NPL listing.

## **6. Maps, pictures and other graphic representations**

Maps indicating the location of the Site are included as Attachment B. Also, photos documenting the conditions of the containers are included as Attachment C to this Action Memorandum.

## **B. Other Actions to Date**

### **1. Previous actions**

No previous actions have been taken by EPA or any other federal or local entity to address the compromised containers of hazardous substances located at the Site. The NYSDEC worked to stabilize and consolidate containers holding similar materials,

however access to the property was limited to exterior locations. Containers and spills located inside the warehouse were not addressed. NYSDEC also removed free liquids found on the ground pooling near several drums, however stained soil was observed during the assessment along with sheening in on-site surface waters. Composite samples of container contents have been collected by the State and shared with EPA. Results indicate the presence of heavy metals, VOCs, SVOCs, and RCRA characteristic hazardous wastes.

## **2. Current actions**

The NYSDEC requested EPA assistance on October 31, 2014. On November 13, 2014 EPA visited the Site with representatives from NYSDEC remediation and enforcement divisions. Although efforts to stabilize containers had been conducted, adverse weather such as heavy winds and snow had removed temporary protective measures installed by State contractors. Officials observed numerous drums with contents exposed, spilled and impacting surface soils and waters. Response operations were initiated on November 17, 2014. EPA personnel and contractors deployed to the Site on November 18, 2014, but were unable to access the property due to significant snowfall and accumulation.

On December 10, 2014, EPA and contractors returned to the Site to further stabilize and secure the containers. Personnel removed debris and organized materials located inside the warehouse and prepared it for housing containers, protected from adverse weather conditions. Additional protective measures, including sealing of floor drains, were taken to prevent releases of materials to the environment in case of accidental spills. All containers were moved inside the warehouse and inventoried. Approximately 285 containers were cataloged, including approximately 110 55-gallon drums, three cylinders, numerous waste oil tanks and over 100 5-gallon pails. Access to the Site has been secured with the addition of locks on the entry gate and overhead doors.

Transportation and Disposal options continue to be developed with the T&D subcontractor secured on December 30, 2014. Disposal schedules are being generated with removal of containers estimated to be completed by end of January 2015.

## **C. State and Local Authorities' Roles**

### **1. State and local actions to date**

NYSDEC observed open burning of telephone poles and debris in June 2014. Further investigation of the Site found numerous drums located throughout the property in various states of deterioration. In efforts to limit environmental and off-site impacts, NYSDEC obtained contract services to stabilize the containers. Approximately 20 drums were placed in overpack containers while others were given lids, up-righted and covered. In October 2014, approximately 17 composite samples were collected of container contents in addition to one surface water sample to determine impacts from leaking drums. All drums were staged based on contents of similar nature and covered with

plastic sheeting and tarps. Following the receipt of analytical results, the State requested EPA assistance with the removal of materials.

## **2. Potential for continued State/local response**

No additional response actions are expected from the local or State entities. The NYSDEC requested EPA to take over all removal actions following the RSE and investigation of the Site conducted on November 13, 2014.

## **III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES**

Conditions at the Site meet the requirements of 40 CFR Section 300.415(b)(2) for implementing a CERCLA removal action. Factors from the NCP that support a removal action at the Site are provided below.

### **A. Threats to Public Health or Welfare**

- (i) *Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants.***

Analysis of contents of containers found at the Site has identified flammable liquids, heavy metals and hazardous substances including benzene, toluene, arsenic, chromium, lead, and zinc. Several of these containers have been compromised and/or have leaked, allowing for actual or potential exposure to nearby human and animal populations.

- (iii) *Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release.***

Hazardous substances and characteristic hazardous wastes are housed in compromised containers that are unsecured and exposed to adverse weather conditions. These containers pose a threat of release. Several containers have already leaked and/or been voided of contents.

- (v) *Weather conditions that may cause hazardous substances, or pollutants, or contaminants to migrate or be released.***

Several containers were found to be without covers and have holes on the sides. Precipitation has caused material stored in drums to be spilled onto the ground. This material can then make its way via surface water runoff, migrate and contaminate down-gradient properties should a removal action not be taken.

- (vi) *Threat of fire or explosion.***

Analytical data indicates that several containers hold material that is extremely flammable. In addition, a large volume of zinc dust has been found stored in numerous small pails. Should this material come into contact with an ignition source, a fire or

explosion could occur. Fires have been started in the past by vandals attempting to remove construction material and abandoned items.

*(vii) The availability of other appropriate federal or State response mechanisms to respond to the release.*

To date, the Town of Darien has not addressed the containers at the Site. Although operations to stabilize and prepare containers for removal were commenced by the NYSDEC, the State agency has ceased operations and requested EPA to conduct a removal action at the Site.

#### **B. Threats to the Environment**

The Site is located in a mixed commercial and residential area. Since a release has occurred, the natural flora and fauna in these areas could have been negatively impacted. A release may also have resulted in hazardous substances being transported off-site via surface water run-off.

### **IV. ENDANGERMENT DETERMINATION**

Actual or threatened releases of hazardous substances from the Site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, welfare, or the environment.

### **V. PROPOSED ACTIONS AND ESTIMATED COSTS**

#### **A. Proposed Actions**

##### **1. Proposed action description**

The purpose of this removal action is to eliminate the threats to public health and the environment associated with the release or threat of release of hazardous substances present in drums and containers at the Site. EPA proposes to bulk the materials to consolidate wastes of similar characteristics. The contents of all containers will be transferred to DOT-shippable containers to prevent additional spillage of materials during transport. Materials will be transported to facilities that are awarded treatment or disposal through the ERRS contractor. All spent containers will be RCRA empty prior to disposal. Surficial samples will be collected from stained and stressed areas thought to be impacted from former operations and compromised containers. Media (largely soil) impacted from spills, leaking drums or discharges which pose a direct contact threat, will be addressed and removed as part of this action. Should field observations and/or sample data indicate the presence of additional contamination, a separate assessment of those areas will be conducted to determine their extent and magnitude.

All materials will be disposed of in accordance with the Off-Site Rule ("OSR") compliance criteria.

**2. Contribution to remedial performance**

Based on available information, the proposed action will not impede future responses.

**3. Engineering Evaluation/Cost Analysis ("EE/CA")**

Due to the time-critical nature of this removal action, an EE/CA has not been prepared.

**4. Applicable or relevant and appropriate requirements ("ARARs")**

ARARs within the scope of this removal action, including the RCRA and the Hazardous Materials Transportation Uniform Safety Act regulations that pertain to the disposal of hazardous wastes, will be met to the extent practicable.

**5. Project schedule**

Response actions commenced on November 17, 2014. In December 2014 containers were up-righted, covered and moved indoors for protection from the weather. In addition to stabilization activities, the Site was secured to prevent unauthorized access. Bulking activities and preparations for disposal will take place in January 2015 with T&D of containers scheduled to be completed by mid-January 2015. Analytical results obtained from the NYSDEC will be utilized for developing appropriate transportation and disposal activities. Removal of surface soils, if necessary, will be conducted in the spring of 2015.

**B. Estimated Costs**

**EXTRAMURAL COSTS:**

	<b>Ceiling Amounts Provided Under Verbal Authorization of November 17, 2014</b>
<b>Total Cleanup Contractor Cost (Includes 20% Contingency)</b>	\$200,000
<b>Other Extramural Costs, (RST, AST)</b>	\$ 50,000
<b>Subtotal, Extramural Costs</b>	\$250,000
<b>Extramural Cost Contingency</b>	\$0,000
<b>Total, Extramural Removal Action Project Ceiling</b>	\$250,000

**VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

A delay in action or no action at this Site would increase the actual or potential threats to the public health and/or the environment.



## **VII. OUTSTANDING POLICY ISSUES**

There are no known outstanding policy issues associated with the Site at the present time.

## **VIII. ENFORCEMENT**

No PRPs have been identified that are capable of performing the described removal action.

Based on full cost accounting practices, the total EPA costs for this removal action that will be eligible for cost recovery are estimated to be \$380,518. The following chart describes the costs which EPA believes are eligible for cost recovery as part of this response action.

Cost Type	Funding Requested in this Action Memorandum
Direct Extramural Costs	\$250,000
Direct Intramural Costs	\$ 25,000
Subtotal, Direct Costs	\$275,000
Indirect Costs (Indirect Regional Cost Rate 38.37%)	\$105,518
Estimated EPA Costs Eligible for Cost Recovery	\$380,518

Note: Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective September 30, 2014. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual costs from this estimate will affect the United States' right to cost recovery.

## **IX. RECOMMENDATION**

This decision document represents the selected removal action for the Phoenix Development and Construction Site in Darien, New York, developed in accordance with CERCLA as amended, and not inconsistent with the National Contingency Plan. This decision is based on the administrative record for the Site.

Conditions at the Site meet the NCP Section 300.415(b) criteria for a removal action. The total project ceiling requested is \$250,000, of which \$200,000 is for mitigation contracting. There are sufficient monies in the Regional removal advice of allowance to fund this project.

Please indicate your formal approval of the verbal authorization granted for the emergency removal action at the Phoenix Development and Construction Site, as per current Delegation of Authority, by signing below.

Approved:



Walter E. Mugdan, Director  
Emergency and Remedial Response Division

Date:

2/4/2015

Disapproved:

Walter E. Mugdan, Director  
Emergency and Remedial Response Division

Date:

cc: (upon approval)

W. Mugdan, ERRD-D

J. LaPadula, ERRD-DD

J. Rotola, ERRD-RAB

E. Wilson, ERRD-RAB

B. Grealish, ERRD-RAB

G. Zachos, ERRD

D. Garbarini, ERRD-NYRB

T. Lieber, ORC-NYSFB

M. Mears, PAD

L. Rosman, NOAA

D. Dearden, PAD

T. Grier, 5202G

K. Giacobbe, OPM-GCMB

P. McKechnie, OIG

R. Craig, RST

D. Farrar, NYSDEC

A. English, NYSDEC

A. Raddant, USDOJ

**ACTION MEMORANDUM FOR THE  
PHOENIX DEVELOPMENT AND CONSTRUCTION SITE  
CORFU, NEW YORK  
SITE ID# A24M**

**ATTACHMENT A**

**Removal Action Request from NYSDEC**

**New York State Department of Environmental Conservation**  
**Division of Environmental Remediation**  
Bureau of Technical Support, 11<sup>th</sup> Floor  
625 Broadway, Albany, New York 12233-7020  
**Phone:** (518) 402-9543 • **Fax:** (518) 402-9547  
**Website:** [www.dec.ny.gov](http://www.dec.ny.gov)



October 31, 2014

Mr. Walter Mugdan, Director  
Emergency & Remedial Response Division  
USEPA, Region II  
290 Broadway  
New York, New York 10007-1866

RE: Phoenix Development and Construction  
180 Genesee Street  
Darien, Genesee County, NY

Dear Mr. Mugdan:

The New York State Department of Environmental Conservation (DEC) hereby requests that the United States Environmental Protection Agency (USEPA) perform an appropriate CERCLA emergency response action at the Phoenix Development and Construction site located in the Village of Corfu, Town of Darien, Genesee County, New York.

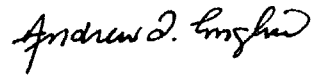
The site was originally discovered during an investigation of a complaint about open burning at the site. During the investigation, dozens of drums and containers containing waste oil, sludge, and solvents were discovered. Many of the drums were found on the surface of wetland areas with others buried below them. There appears to be no recent business activity on the site, and all attempts to contact the owner (Markella Zafirakis) were unsuccessful. Due to the emergency nature of the situation, DEC entered the site with DEC Law Enforcement Officers in an effort to stabilize conditions and further investigate the site.

With the aid of a cleanup contractor (National Vacuum), the DEC has stabilized and/or over-packed 84 drums of mixed solvent, paint, petroleum, and sand waste. Surface spills have been removed from marshy areas by vacuum truck. This was only emergency response work to help stabilize the site. Further investigation and cleanup will be needed to adequately address the situation.

Due to the current conditions of this site, and the potential hazards to the environment, the DEC is requesting that the USEPA to perform an appropriate CERCLA emergency response action at the Phoenix Development and Construction site in Genesee County.

If you have any questions regarding this request, please contact Mr. Pete Miller of the DEC Region 8 office at (585) 226-5434.

Sincerely,



Andrew J. English, P.E.  
Director  
Bureau of Technical Support

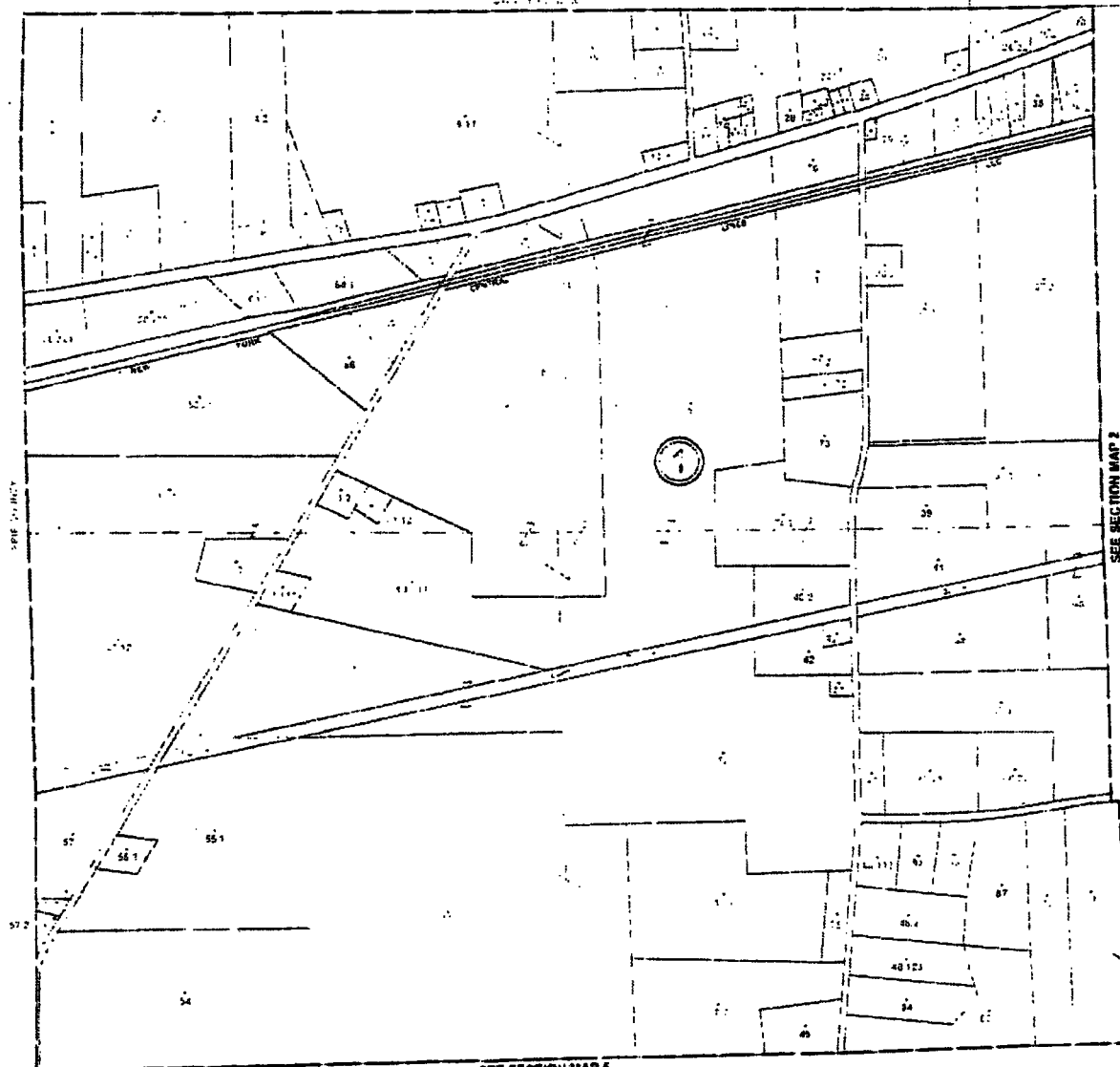
Enclosures

cc w/enc: E. Mosher - USEPA, Region II, Edison, NJ  
G. Zachos - USEPA, Region II, Edison, NJ  
J. Rotola - USEPA, Region II, Edison, NJ  
J. Daloia- USEPA, Region II  
D. Farrar  
R. Rutland  
P. Miller, Region 8

**ACTION MEMORANDUM FOR THE  
PHOENIX DEVELOPMENT AND CONSTRUCTION SITE  
CORFU, NEW YORK  
SITE ID# A24M**

**ATTACHMENT B**

**Site Maps**



SEE SECTION MAP 5

SEE SECTION MAP 2

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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SECTION 1



### Legend

- Address Points
- Roads (Large Scale)
- Active Railroads (Large Scale)
- Streams (Large Scale)
- 2013 Tax Parcels
- Wetland Boundary
- Protected 100 ft Buffer
- Federal
- Water (Large Scale)
- Towns
- City & Villages (Large Scale)
- Counties (Large Scale)

Year 2013 Aerial Photos (Scale Dependent) 4in

### RGB

- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3

Year 2013 Aerial Photos (Scale Dependent) 9in

### RGB

- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3





# Legend

- Address Points
- Roads (Large Scale)
- Active Railroads (Large Scale)
- Streams (Large Scale)
- 2013 Tax Parcels
- Wetland Boundary
- Protected 100 ft Buffer
- Federal
- Water (Large Scale)
- Towns
- City & Villages (Large Scale)
- Counties (Large Scale)

Year 2013 Aerial Photos (Scale Dependent)4in

## RGB

- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3

Year 2013 Aerial Photos (Scale Dependent)9in

## RGB

- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3





### Legend

- Address Points
- Roads (Large Scale)
- Active Railroads (Large Scale)
- Streams (Large Scale)
- 2013 Tax Parcels
- Wetland Boundary
- Protected 100 ft Buffer
- Federal
- Water (Large Scale)
- Towns
- City & Villages (Large Scale)
- Counties (Large Scale)

### Year 2010 Aerial Photos

#### RGB

- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3





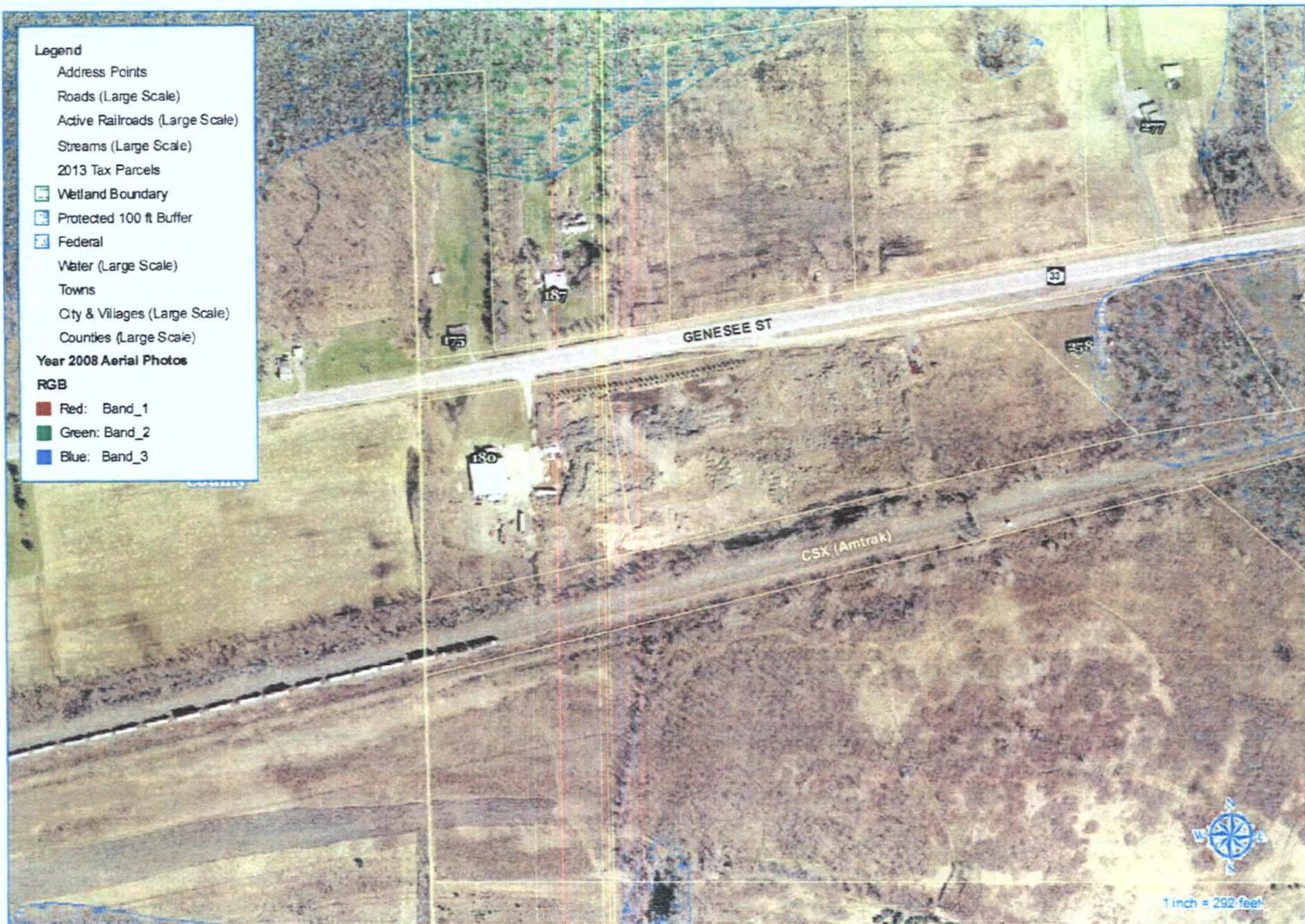
# Legend

- Address Points
- Roads (Large Scale)
- Active Railroads (Large Scale)
- Streams (Large Scale)
- 2013 Tax Parcels
- Wetland Boundary
- Protected 100 ft Buffer
- Federal
- Water (Large Scale)
- Towns
- City & Villages (Large Scale)
- Counties (Large Scale)

## Year 2008 Aerial Photos

### RGB

- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3



**ACTION MEMORANDUM FOR THE  
PHOENIX DEVELOPMENT AND CONSTRUCTION SITE  
CORFU, NEW YORK  
SITE ID# A24M**

**ATTACHMENT C**

**Site Photos**









